

04-28729

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

Chapter 13 Case:

Case Number BKY 04-34316-DDO

Suzanne Perrine,

Debtor(s)

**NOTICE OF HEARING AND MOTION
FOR RELIEF FROM STAY**

To: The Debtor and other entities specified in Local Rule 9013-3(a).

1. JPMorgan Chase Bank as Trustee moves the Court for relief requested below and gives Notice of Hearing.

2. The Court will hold a Hearing on this motion at 9:30 a.m., on November 3, 2004, in Courtroom No. 228A, at the United States Courthouse, at 316 North Robert Street, St. Paul, Minnesota.

3. Any response to this motion must be filed and delivered no later than October 29, 2004, Which is three days before the time set for the hearing(excluding Saturdays, Sundays, and holidays), or filed and served by mail no later than October 25, 2004, which is seven days before the time set for the hearing(excluding Saturdays, Sundays, and holidays). **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. This court has jurisdiction over this motion pursuant to 28 U.S.C. §§157 and 1334, Bankruptcy Rule 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this Chapter 13 case was filed on July 26, 2004. The case is now pending in this court.

5. This Motion arises under 11 U.S.C. §362 and Bankruptcy Rule 4001. This motion is filed under Bankruptcy Rule 9014 and Local Rules 9013-1 - 9019-1(d). Movant Requests Relief with respect to exempt property of the debtor subject to a lien.

6. On January 25, 2003, Suzanne J. Perrine, a single woman made, executed and delivered to Homeowners Loan Corp. her Note (hereinafter referred to as the "Note"), in the original principal amount of \$200,000.00 bearing interest from the date thereof at the rate of 8.09% per annum until paid, payable in monthly installments commencing on the first day of each and every calendar month thereafter until the principal and interest were fully paid.

7. On January 25, 2003, to secure the payment of the Note, Suzanne J. Perrine, a single woman, executed and delivered to Homeowners Loan Corp. her Mortgage (hereinafter referred to as the "Mortgage"), mortgaging and conveying certain real estate in Scott County, Minnesota, legally described as follows:

A TRACT OF LAND IN GOVERNMENT LOT 3, SECTION 33, TOWNSHIP 115, RANGE 21, SCOTT COUNTY, MINNESOTA, DESCRIBED AS FOLLOWS: COMMENCING AT THE INTERSECTION OF THE NORTH LINE OF SAID GOVERNMENT LOT 3, AND THE CENTERLINE OF THE NEW TOWN ROAD SAID POINT BEING 3960.40 FEET EAST OF THE NW CORNER OF THE SW 1/4 OF NW 1/4 OF SAID SECTION 33; THENCE SOUTH 36 DEGREES 53 MINUTES WEST ALONG SAID NEW CENTERLINE A DISTANCE OF 68.69 FEET; THENCE SOUTH 54 DEGREES 50 MINUTES WEST CONTINUING ALONG SAID NEW CENTERLINE A DISTANCE OF 435.0 FEET TO THE ACTUAL POINT OF BEGINNING; THENCE CONTINUING SOUTH 54 DEGREES 50 MINUTES WEST A DISTANCE OF 100.0 FEET; THENCE SOUTH 37 DEGREES 26 MINUTES 30 SECONDS EAST A DISTANCE OF 192.0 FEET MORE OR LESS TO THE SHORE OF HANREHAN'S LAKE; THENCE NORTHEASTERLY ALONG SAID SHORE TO ITS INTERSECTION WITH A LINE BEARING SOUTH 38 DEGREES 02 MINUTES 30 SECONDS EAST FROM THE ACTUAL POINT OF BEGINNING; THENCE NORTH 38 DEGREES 02 MINUTES 30 SECONDS WEST, A DISTANCE OF 179.0 FEET MORE OR LESS TO THE ACTUAL POINT OF BEGINNING

which property has an address of: 5215 Hanerhan Lake Blvd., Prior Lake, MN 55372. The mortgage was filed for record in the office of the Recorder, County of Scott, on February 4, 2003, as Document No. A585640, and was subsequently assigned to Movant by assignment of mortgage. A copy of the mortgage assignments are attached hereto as Exhibit "A" and made a part hereof by reference.

8. The debtors have filed a plan dated July 26, 2004, which was confirmed by subsequent Court Order. The plan provided, among other things that:

"5. Home Mortgages In Default [§1322(b)(5)] - The trustee will cure defaults on claims secured only by a security interest in real property that is the debtor's principal residence as follows. The debtor will maintain the regular payments which come due after that date the petition was filed. The creditors will retain their liens. The amounts of default are estimates only. The trustee will pay the actual amounts of default.

9. Notwithstanding the foregoing provisions of said plan, the debtors have not maintained current payments with respect to said note and mortgage, while this case is pending.

10. Debtors are in arrearage for monthly payments as shown below. The last payment received from Debtors was applied to the July, 2004 payment as that was the next payment due. Post-petition arrearage include the following:

2 payments @ \$1,480.10	\$2,960.20
1 payment @ \$1,824.82	\$1,824.82
3 late charges @ \$ 74.01	\$222.03
Attorneys Fees & Costs	\$800.00
TOTAL POST - PETITION	<u>\$5,807.05</u>

No payments have been made pursuant to the plan. Amounts currently due and owing include the following:

Principal Balance	\$198,358.83
Interest	\$11,145.00
Escrow Shortage	\$6,895.60
Accumulated late fees	\$888.12
Attorneys Fees & Costs	\$2,644.42
TOTAL	<u>\$219,931.97</u>

11. Debtors have claimed said mortgaged property as exempt pursuant to MSA 510.01.
12. By reason of the foregoing, good cause exists to lift the automatic stay imposed by 11 USC section 362 to allow Movant to pursue its remedies under State Law.
13. **This is an attempt to collect a debt and any information obtained will be used for that purpose.** This notice is required by the provisions of the Fair Debt Collection Practices Act and does not imply that we are attempting to collect money from anyone who has discharged the debt under the Bankruptcy Laws of the United States.

Wherefore, JPMorgan Chase Bank as Trustee moves the court:

1. For an Order granting creditor relief from the automatic stay of 11 USC section 362.
2. For such other and further relief as the Court finds just and proper.

Dated: 10.13.01

Signed: /e/ NANCY A. NORDMEYER

SHAPIRO & NORDMEYER, L.L.P.
 Nancy A. Nordmeyer-121356
 Lawrence P. Zielke-152559
 Attorney for movant
 7300 Metro Boulevard #390
 Edina, MN 55439-2306
 (952) 831-4060

VERIFICATION

I, Dan Ainters, the Bankruptcy Manager for Fidelity National Foreclosure Solutions, the authorized servicer for movant, the movant named in the foregoing notice of hearing and motion, declare under penalty of perjury, that the foregoing is true and correct according to the best of my knowledge, information and belief.

Executed on:

10-11-01

Signed:

[Signature]

Fidelity National Foreclosure Solutions
1270 Northland Drive, Suite 200
Mendota Heights, MN 55120

Doc. No. A 585640

OFFICE OF THE COUNTY RECORDER
SCOTT COUNTY, MINNESOTA

Certified Filed and/or Recorded on

02-04-2003 at 12:45 Receipt: 250338

Pat Boeckman, County Recorder 01

Fee: \$ 20.00

Registration tax of \$ 460.00 paid
Treasurer's Receipt No. 250338
Conservation Fee Paid

James Aug
County Auditor

[Space Above This Line for Recording Date]

LOAN NO. 30042486

MORTGAGE

THIS MORTGAGE ("Security Instrument") is given on **JANUARY 25, 2003**. The mortgagor is
SUZANNE J. PERRINE, A WIDOWED WOMAN

This Security Instrument is given to
HOMEOWNERS LOAN CORP.,
A DELAWARE CORPORATION
which is organized and existing under the laws of **DELAWARE**, and whose address is
4501 CIRCLE 75 PARKWAY, SUITE D4300
ATLANTA, GA 30339 ("Lender").
Borrower owes Lender the principal sum of **TWO HUNDRED THOUSAND AND 00/100**

Dollars (U.S. \$ **200,000.00**). This debt is evidenced by Borrower's note dated the same date as this Security Instrument ("Note"), which provides for monthly payments, with the full debt, if not paid earlier, due and payable on **FEBRUARY 1, 2033** and for interest at the yearly rate of **8.090** percent. This Security Instrument secures to Lender: (a) the repayment of the debt evidenced by the Note, with interest, and all renewals, extensions and modifications; (b) the payment of all other sums, with interest, advanced under paragraph 7 to protect the security of this Security Instrument; and (c) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to Lender, with power of sale, the following described property located in **SCOTT** County, Minnesota:
SEE ATTACHED EXHIBIT "A"

which has the address of **5215 HANERHAN LAKE BOULEVARD, PRIOR LAKE**
Minnesota **55372** ("Property Address");
[Zip Code]

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

BORROWER COVENANTS that Borrower is lawfully seised of the estate hereby conveyed and has the right to mortgage, grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

PREPARED BY JOHNNIE SANFORD
HOMEOWNERS LOAN CORPORATION 4501 CIRCLE 75
PARKWAY, STE D-4300 ATLANTA, GA 30339

W
CCL

015

LOAN NO. 30042486

ASSIGNMENT OF MORTGAGE/SECURITY DEED

By Corporation or Partnership

FOR VALUABLE CONSIDERATION,
HOMEOWNERS LOAN CORP.,
A DELAWARE CORPORATION
DELAWARE

22-139 8410427
46712

under the laws of
, Assignor (whether one or more), hereby sells, assigns and transfers to

JPMorgan Chase Bank as Trustee, c/o Residential Funding
Corporation, 2255 North Ontario, Suite 400, Burbank, CA 91504-3190, Assignee (whether
one or more), the Assignor's Interest in the Mortgage/Security Deed dated JANUARY 25, 2003 executed by
SUZANNE J. PERRINE, A Widowed woman

as Mortgagor/Grantor, to
HOMEOWNERS LOAN CORP.
as Mortgagee/Beneficiary, and filed for record 02/04/03, as Document Number
A585640 (or in Book of Page), in the Office of the
(County Recorder) (Registrar of Titles) of SCOTT County, MN
described hereinafter as follows:
SEE ATTACHED EXHIBIT "A"

After Recording Return To:

PEELLE MANAGEMENT CORPORATION
ASSIGNMENT JOB #90815
P.O. BOX 30014
RENO, NV 89520-3014
(775) 827-9600

MORE COMMONLY KNOWN AS;
5215 HANERHAN LAKE BOULEVARD
PRIOR LAKE, MN 55372

UNITED STATES BANKRUPTCY COURT

DISTRICT OF MINNESOTA

In Re:

Case No. 04-34316-DDO

Chapter 13

Suzanne Perrine,

Debtor(s)

MEMORANDUM OF LAW

JPMorgan Chase Bank as Trustee ("Movant"), submits this memorandum of law in support of its motion for relief from the stay in the above-entitled matter.

FACTS

Movant holds a valid, duly perfected mortgage on real property owned by the Debtors. On the date this case was filed, the Debtor(s) were delinquent in respect of payments due under the note and mortgage. Since this case was filed, Debtor(s) are in arrears in the total amount of \$5,807.05.

ARGUMENT

1. Under Section 362.(d)(1) of the Bankruptcy Code, relief from the automatic stay shall be granted upon request of a creditor "for cause, including the lack of adequate protection of an interest in property of such creditor." 11 U.S.C. Sec. 362 (d) (1). The Debtor(s) in this case have failed to make the payments required by the note and mortgage for a period of more than 2 months. Debtor(s) have not otherwise provided Movant with adequate protection of its interest in the property. Such circumstances constitute cause, within the meaning of Section 362 (d) (1), justifying relief from the stay. In Re Video East, Inc., 41 B. R. 176 (Bkrcty. E. D. Pa. 1984); In Re Frascatore, 33 B. R. 687 (Bkrcty. E. D. Pa. 1983).

2. Pursuant to Section 362 (d) (2) of the Bankruptcy Code, relief from the stay is also appropriate where Debtor(s) have no equity in the subject property and the property is not necessary to an effective reorganization. 11 U.S.C. Sec. 362 (d) (2). See, In Re Gellert, 55B.R. 970 (Bkrcty. D. N. H. 1983). In the present case the balance due Movant on the note and mortgage is \$219,931.97.

Accordingly, Movant is entitled to an order terminating the stay and authorizing it to foreclose its mortgage on the property.

Dated: 10.13.04

Respectfully submitted,
SHAPIRO & NORDMEYER, L.L.P.

Signed: /s/ NANCY A. NORDMEYER
Nancy A. Nordmeyer-121356
Lawrence P. Zielke-152559
Attorney for Movant
7300 Metro Boulevard #390
Edina, MN 55439-2306
(952) 831-4060

SWORN CERTIFICATE OF SERVICE

STATE OF MINNESOTA)
) SS
COUNTY OF HENNEPIN)

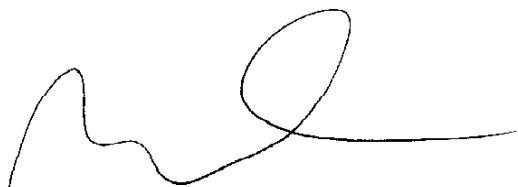
I, **Stephanie Pilegaard** says that on October 13, 2004, I mailed copies of the annexed Memorandum of Law, Proposed Order for Relief from Stay, Notice of Hearing and Motion for Relief from Stay and Certificate of Service on the following interested parties at their last known address, by mailing to them, via first class mail, a copy thereof, enclosed in an envelope, postage prepaid and by depositing the same in the post office at Edina, Minnesota.

Suzanne Perrine
5215 Hanrehan Lake Blvd
Savage, MN 55378

Mr. Robert J. Hoglund
Attorney at Law
1611 County Road B #106
Roseville, MN 55113

Jasmine Z. Keller, Trustee
12 South 6th Street, #310
Minneapolis, MN 55402

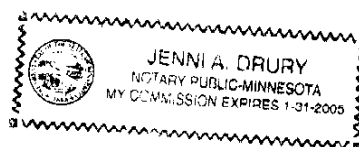
U.S. Trustee
1015 U.S. Courthouse
300 South 4th St.
Minneapolis, MN 55415



Stephanie Pilegaard

Subscribed and sworn to before me October 13, 2004.

Notary



04-28729

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:
Suzanne Perrine,
Debtor(s)

Case No. 04-34316-DDO

ORDER FOR RELIEF FROM STAY

The above-entitled matter came for hearing on November 3, 2004.

THIS CAUSE coming to be heard on the Motion of JPMorgan Chase Bank as Trustee, a creditor in the proceeding, the Court having jurisdiction, due notice having been given, and the Court having been advised in the premises;

IT IS HEREBY ORDERED,

That the automatic stay heretofore entered in this case is modified to the extent necessary to allow JPMorgan Chase Bank as Trustee, its successors and/or assigns, to foreclose in accordance with state law, the mortgage on the real property commonly known as:

A TRACT OF LAND IN GOVERNMENT LOT 3, SECTION 33, TOWNSHIP 115.RANGE 21, SCOTT COUNTY, MINNESOTA, DESCRIBED AS FOLLOWS:
COMMENCING AT THE INTERSECTION OF THE NORTH LINE OF SAID GOVERNMENT LOT 3, AND THE CENTERLINE OF THE NEW TOWN ROAD SAID POINT BEING 3960.40 FEET EAST OF THE NW CORNER OF THE SW 1/4 OF NW 1/4 OF SAID SECTION 33; THENCE SOUTH 36 DEGREES 53 MINUTES WEST ALONG SAID NEW CENTERLINE A DISTANCE OF 68.69 FEET; THENCE SOUTH 54 DEGREES 50 MINUTES WEST CONTINUING ALONG SAID NEW CENTERLINE A DISTANCE OF 435.0 FEET TO THE ACTUAL POINT OF BEGINNING; THENCE CONTINUING SOUTH 54 DEGREES 50 MINUTES WEST A DISTANCE OF 100.0 FEET; THENCE SOUTH 37 DEGREES 26 MINUTES 30 SECONDS EAST A DISTANCE OF 192.0 FEET MORE OR LESS TO THE SHORE OF HANREHAN'S LAKE; THENCE NORTHEASTERLY ALONG SAID SHORE TO IT'S INTERSECTION WITH A LINE BEARING SOUTH 38 DEGREES 02 MINUTES 30 SECONDS EAST FROM THE ACTUAL POINT OF BEGINNING; THENCE NORTH 38 DEGREES 02 MINUTES 30 SECONDS WEST, A DISTANCE OF 179.0 FEET MORE OR LESS TO THE ACTUAL POINT OF BEGINNING

NOTWITHSTANDING Federal Rule of Bankruptcy Procedure 4001 (a)(3), this order is effective immediately.

Dated: _____

BY THE COURT:

Judge of Bankruptcy Court